

## REMARKS/ARGUMENTS

1. In a final Office Action dated 9/23/2008 that was upheld in the 1/14/2009 Notice of Panel Decision, the Examiner rejected claims 23-29 under 35 USC § 101 as being directed to non-statutory subject matter; claims 14-17, 19, 76-79 and 81 under 35 USC § 102 (e) as being anticipated by Blackketter (U.S. Patent No. 7,237,253); claims 18, 49 and 80 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) and claims 45-48 and 50 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) in view of Field (U.S. Patent No. 6,018,764).

Claims 14-19, 45-50 and 76-81 are currently pending in this application. Claims 14, 45-50 and 76 have been amended. The rejections above have been traversed and, as such, the applicant respectfully requests reconsideration of the allowability of claims 14-19, 45-50 and 76-81.

2. As discussed above, the Examiner rejected claims 23-29 under 35 USC § 101 as being directed to non-statutory subject matter. However, claims 23-29 had been cancelled in a prior response. Applicant respectfully requests that this basis for rejection be withdrawn.

3. As discussed above, claim 14 was also rejected under 35 USC § 102 (e) as being anticipated by Blackketter (U.S. Patent No. 7,237,253). Claim 14 recites in part:

“determining, at the user device and independent of any request by a user of the user device for the alternate content, whether the indicator signal is relevant to the user viewing original content provided by the interactive television service provider’s network; and

responsive to determining the indicator signal is relevant to the user, displaying on a screen of the user device an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form,

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: a content type selected by the user; and a genre selected by the user.” [emphasis added]

In setting forth the basis for the rejection, the Examiner points to steps 302-310 in Figure 9 for determining an interactive mode based on the received television program. While Blackketter does determine whether an interactive mode is available for a particular channel, Blackketter specifically does not determine whether an indicator signal is relevant to a user, based on either a user selected content type or a user selected genre. In particular, Blackketter does not teach using either a user selected content type or genre. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not based on a user selected content type or a user selected genre.

For these reasons, claim 14 and claims 15-19 that depend therefrom are patentably distinct from the prior art. Further, while claim 18 was also rejected based on the Blackketter in combination with Official Notice. The Official notice relied upon by the Examiner does not correct the deficiency in Blackketter discussed above.

3. As discussed above, claim 76 was rejected under 35 USC § 102 (e) as being anticipated by Blackketter (U.S. Patent No. 7,237,253). Claim 76 recites in part:

“determining, at the user device, and independent of any request by a user of the user device for the alternate content, whether the indicator signal is relevant to the user viewing original content provided by the interactive television service provider’s network; and

responsive to determining the indicator signal is relevant to the user, display on a screen of the user device an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form;

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: a content type selected by the user; and a genre selected by the user.” [emphasis added]

As discussed in conjunction with Claim 14, Blackketter specifically does not determine whether an indicator signal is relevant to a user, based on either a user selected content type or a user selected genre. In particular, Blackketter does not teach using either a user selected content type or genre. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not based on a user selected content type or a user selected genre.

For these reasons, claim 76 and claims 77-81 that depend therefrom are patentably distinct from the prior art. Further, while claim 80 was also rejected based on the Blackketter in combination with Official Notice. The Official notice relied upon by the Examiner does not correct the deficiency in Blackketter discussed above.

5. As discussed above, claim 45 was rejected claims 45-48 and 50 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) in view of Field (U.S. Patent No. 6,018,764). Claim 45 recites in part:

“a processor coupled to the demultiplexor portion to determine whether the indicator signal is relevant to a user viewing original content over a channel provided by the interactive television service provider’s network, and responsive to determining the indicator signal is relevant to the user, displaying on a screen of the user device an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form;

wherein the determining is independent of any request by the user for the alternate content;

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: a content type selected by the user; and a genre selected by the user.” [emphasis added]

As discussed in conjunction with Claim 14, Blackketter specifically does not does not determine whether an indicator signal is relevant to a user, based on either a user selected content type or a user selected genre. In particular, Blackketter does not teach using either a user selected content type or genre. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not based on a user selected content type or a user selected genre.

For these reasons, claim 45 and claims 46-50 that depend therefrom are patentably distinct from the prior art. Further, while claim 49 was also rejected based on the Blackketter in combination with Official Notice. The Official Notice relied upon by the Examiner also does not correct the deficiency in Blackketter discussed above.

**Conclusions**

For the foregoing reasons, the applicant believes that claims 14-19, 45-50 and 76-81 are in condition for allowance and respectfully request that they be passed to allowance.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

This response is timely filed. No additional fees are believed to be due. The Commissioner is authorized to charge any fees that are required or credit any overpayment to Deposit Account No. 50-2126 (ATT030073).

RESPECTFULLY SUBMITTED,

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